

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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CALIFORNIA CODE OF REGULATIONS

TITLE 8, Chapter 4, Subchapter 7, Article 5, Sections 3291; and
Article 6, Sections 3292, 3295 and 3296 of the General Industry Safety Orders.

Load Sustaining Devices Used in Window Cleaning and Building Maintenance OperationsMODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM
THE 45-DAY PUBLIC COMMENT PERIOD

There are no modifications to the information contained in the Initial Statement of Reasons.

SUMMARY AND RESPONSE TO ORAL AND WRITTEN COMMENTSI. Written Comments

There were no written comments.

II. Oral Comments

There were no oral comments received from the regulated public. Upon considering the proposal at the November 16, 2006, Public Hearing, individual Board Members had the following concerns which are addressed in the responses.

Ms. Liz Arioto, Board MemberComment No. 1:

Ms. Arioto asked if the proposed 5000 pound strength requirement for roof tie-backs [Section 3291(f)(2)(C)] would apply to wood frame buildings as well as other buildings.

Response:

Existing Section 3291(f)(1) requires that every building constructed three stories or more have provisions for roof tie-backs with the two exceptions listed in the text. Therefore, the 5000-pound strength requirement for roof tie-backs would apply to all types of construction for buildings 3 stories or 36 feet or more in height.

Comment No. 2:

Ms. Arioto asked if a mechanical engineer would need to substantiate the structural integrity of roof tie-backs installed on a wood frame building.

Response:

Section 3291(a) requires that a civil or mechanical engineer substantiate the structural integrity of roof tie-backs.

The Board staff thanks Ms. Arioto for her comments.

Dr. Jonathan Frisch, Ph.D., Board Member

Comment No. 1:

Proposed Section 3296(b)(3)(D) states that if safety deficiencies affecting the load bearing integrity of devices or equipment have not been corrected within 60 days from the date the building owner was notified, the deficiencies shall be reported to the Division by the inspecting agency contracted to perform inspections and/or testing. Dr. Frisch asked why there was a 60-day grace period before a deficiency is reported to the Division.

Response:

The building owner needs time to arrange for structural repairs and is not in violation of any standards if they do not use the deficient equipment or devices while arranging for repairs or corrections. The Division proposed that a period of 60 days would be an appropriate amount of time before giving notice to the Division that repair of deficient equipment or devices had not been made. If corrections had not been made in that time, the reporting requirement would alert the Division to follow up on the deficiency with the building owner and the inspecting agency.

Comment No. 2:

Dr. Frisch asked if the requirement to alert the Division about deficiencies is always made by a third party inspecting agency and if there was any rule that the inspecting agency must go back and reevaluate at a later time.

Response:

Proposed Section 3296(b)(3)(D) would require the inspecting agency to report deficiencies. However, other provisions in existing Section 3296(b)(3), now renumbered to Section 3296(b)(7) in the proposal, require that the employer using working platforms inspect the platforms and their components for visible defects before each use and after any occurrence that could affect the platform's structural integrity. Section 3298 "Operations" also requires the employer (e.g., window cleaning or building maintenance company) to train employees in operating and inspecting working platforms. The Division states that they frequently receive calls from window cleaning companies reporting deficiencies found during the daily inspection.

There is no specific standard that requires the inspecting agency to reevaluate deficient equipment/devices within a specific time period. However, nearly all repairs and corrections to equipment/devices are made by the inspecting agency. Therefore, if the inspecting agency has not made the repairs within 60 days it is more than likely that the repairs have not been made at all, which triggers a notice to the Division. The Division states that this has been an ongoing process for a number of years and the proposal formalizes it.

Comment No. 3:

Dr. Frisch expressed concern that there appears to be an opportunity for the deficiency in a structural component to fall through the cracks if the inspecting agency is not still engaged by the building owner at the 60-day point when the rectification is expected. He stated that the obligation is not on the owner but on a third party, and that is cause for concern.

Response:

The advisory committee discussed who would be the appropriate entity to report deficiencies that had not been corrected within 60 days to the Division. It was determined that having the building owner report to the Division was not as reliable or probable as requiring the third party inspecting agency to give notice of the deficiencies to the Division. Also see the response to Comment no. 2.

Comment No. 4:

Dr. Frisch asked if it was always a third party that is engaged in this activity (reporting deficiencies) or would it sometimes be an employee of the building owner.

Response:

The Division stated that the inspections are required to be done by the manufacturer, the manufacturer's representative, or other qualified persons that are acceptable to the Division [see Section 3296(b)(1)]. These individuals are customarily the persons to report serious hazards that are not corrected, which triggers a Division inspection of the situation. Also see the responses to Comment nos. 2 and 3.

The Board staff thanks Dr. Frisch for his comments.

Mr. John MacLeod, Board Chairman

Comment No. 1:

Chairman MacLeod asked whether the design engineering requirements and safety factors (for window cleaning and building maintenance equipment) were less stringent, equivalent, or more stringent than the ASME/ANSI standards.

Response:

The engineering requirements in the proposal are consistent with the ASME/ANSI standards. The required 4:1 safety factors for window-cleaning and building maintenance equipment are consistent with the powered platform consensus standards for building maintenance (ASME A120.1-2001), as well as the window-cleaning safety standard (IWCA I-14.1-2001).

Comment No. 2:

Chairman MacLeod asked if a single davit would be sufficient to support the weight of the scaffolding should one davit on one side of the mechanism fail.

Response:

Board staff responded that the davits are required to be designed with a 4:1 safety factor. In other words, if the rated load is 1,250 pounds, the davit is actually manufactured to support four times that amount, or 5,000 pounds. The purpose of the 4:1 safety factor is to provide sufficient strength for unexpected loads. Mr. Larry McCune, Principal Engineer, Division, responded that a failure could be either a hoist line failure or a davit failure, or the hoist machine itself. In California and other states there have been incidences where a platform will be hanging from one end and the workers were protected from falling with their independent safety lines. At the advisory committee for this proposal, Mr. McCune stated that in approximately 20 years of experience he is aware of only about a half dozen davit failures. The common factors for failure are inadequate welding or design features without the required safety factor of four.

Comment No. 3:

Chairman MacLeod asked whether the size limit for portable davits in proposed Section 3295(c)(3)(G) would require a wholesale exchange of the building system utilized.

Response:

Board staff responded that the advisory committee discussed whether there would be any retrofitting impact on current building owners and agreed that the ASME/ANSI standards for powered platforms and building maintenance have contained that provision since at least 2001. The Division indicated that they have been enforcing the davit size limit for a number of years and not permitting the installation of oversized davits that are quite unsafe for workers to manually move.

The Board staff thanks Mr. MacLeod for his comments.

ADDITIONAL DOCUMENTS RELIED UPON

None.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

These standards do not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed standards. No alternative considered by the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the adopted action.